

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEVIN A. WHITTIER, individually,

Plaintiff,

vs.

SEATTLE TUNNEL PARTNERS, a joint  
venture; HARRIS REBAR SEATTLE, INC.,  
a Delaware corporation; HNTB  
CORPORATION, a Delaware corporation;

Defendants

No. 2:17-cv-00751

**MOTION FOR CONTEMPT**

Noted: November 9, 2018

**I. RELIEF REQUESTED**

Plaintiff respectfully asks the Court to enter and order that (1) finds Defendant HNTB in contempt of the Court's October 11, 2018 Order Granting Plaintiff's Motion to Compel [Dkt. No. 72]; (2) awards a per diem fine for each day that Defendant HNTB has failed and continues to fail with compliance of the Court's Order; and (3) awards Plaintiff's attorney's fees and costs in bringing this motion.

**II. RELEVANT FACTS**

On September 19, 2018, Plaintiff filed a motion to compel HNTB's discovery responses to four (4) interrogatories and eight (8) requests for production. Dkt. No. 66. On

MOTION FOR CONTEMPT

1 October 3, 2018, Plaintiff received discovery responses from HNTB. Dkt. No. 69. By  
 2 HNTB's own admission, "the answers and responses [were] not complete and require[d]  
 3 supplementation." *Id.*

4 On October 11, 2018, the Court entered an order granting Plaintiff's motion to  
 5 compel, stating that "HNTB has wholly failed to satisfy its discovery obligations under the  
 6 Federal Rules of Civil Procedure and has made no effort to justify that failure." Dkt. No. 72.  
 7 The Court ordered HNTB to provide "full and complete responses" to Plaintiff's discovery by  
 8 October 18. *Id.*

9 Plaintiff has waited patiently for supplemental responses, but HNTB has failed to  
 10 provide responses as ordered by the Court. Plaintiff therefore asks the Court to find  
 11 Defendant HNTB in contempt, sanction HNTB to deter future discovery abuses, and award  
 12 attorney's fees for this motion.

### 13 **III. EVIDENCE RELIED UPON**

14 The Declaration of Kevin M. Hastings In Support of Plaintiff's Motion for Contempt,  
 15 filed herewith, as well as the existing record on file.

### 16 **IV. LEGAL ARGUMENT**

17 The Court should find Defendant HNTB in civil contempt and sanction it failing to  
 18 obey the Court's Order. "Civil contempt . . . consists of a party's disobedience of a specific  
 19 and definite court order by failure to take all reasonable steps within the party's power to  
 20 comply." *In re Dual-Deck Video Cassette Recorder Antitrust Litigation*, 10 F.3d 693, 695  
 21 (9th Cir. 1993). Sanctions for civil contempt may be imposed to coerce obedience to a court  
 22 order, or to compensate the party pursuing the contempt action for injuries resulting from the  
 23 contemptuous behavior, or both." *General Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376,  
 24 1380 (9th Cir. 1986). A party seeking contempt may also be entitled to attorney's fees and  
 25  
 26

costs incurred in bringing the motion. *BMG Music v. Perez*, 952 F.2d 318, 320 (9th Cir. 1991).

Here, the Court's Order here was very clear, and yet HNTB has failed to comply. Consequently, the Court should impose a per diem fine, in an amount it finds reasonable, for each day that Defendant HNTB has failed and continues to fail with compliance of the Court's Order. *See, e.g., International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 829 (1994) ("a per diem fine imposed for each day a contemnor fails to comply with an affirmative court order . . . exert[s] a constant coercive pressure. . ."). The Court should also award Plaintiff the attorney's fees incurred in bringing this motion, which amounts to **\$997.50** (see Decl. of Hastings below). *Harcourt Brace Jovanovich Legal and Professional Publications, Inc. v. Multistate Legal Studies, Inc.*, 26 F.3d 948, 953 (9th Cir. 1994) ("An award of attorney's fees for civil contempt is within the discretion of the district court.").

## V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully asks the Court to enter and order that (1) finds Defendant HNTB in contempt of the Court's October 11, 2018 Order Granting Plaintiff's Motion to Compel [Dkt. No. 72]; (2) awards a per diem fine for each day that Defendant HNTB has failed and continues to fail with compliance of the Court's Order; and (3) awards Plaintiff's attorney's fees and costs in bringing this motion.

SIGNED this 25th day of October, 2018.

PFAU COCHRAN VERTETIS AMALA PLLC

By: /s/ Kevin M. Hastings

Darrell L. Cochran, WSBA No. 22851  
Kevin M. Hastings, WSBA No. 42316

MOTION FOR CONTEMPT

1 UNITED STATES )  
2 : ss  
3 WESTERN DISTRICT COURT )

4 I, KEVIN M. HASTINGS, hereby declare under penalty and perjury under the laws of  
5 the State of Washington and the United States that the following is true and correct:

6 I am over the age of 18, competent to testify as to the matters stated herein and make  
7 this declaration based on my personal knowledge. I am attorney of record for the Plaintiff in  
8 this matter.

9 My office has not received any supplementation to discovery from Defendant HNTB  
10 since the Court's October 11, 2018, Order Granting Plaintiff's Motion to Compel [Dkt. No.  
11 72].

12 I graduated from Seattle University School of Law in 2009 with honors. Immediately  
13 after taking the bar examination in the summer of 2009, I served for two years as a judicial  
14 law clerk for the Honorable C.C. Bridgewater at Division 2 of the Washington State Court of  
15 Appeals. I then accepted a position at Pfau Cochran Vertetis Amala, PLLC, where I have  
16 been practicing complex personal injury since August 2011. I was named partner at Pfau  
17 Cochran Vertetis Amala, PLLC in January 2017. I am licensed to practice in Washington and  
18 Oregon, as well as the federal courts in the same jurisdictions. I have been named a Rising  
19 Star by the Super Lawyers publication since 2013.

20 My hourly rate is \$475.00. This hourly rate accounts for my extensive experience and  
21 training as a trial attorney in complex personal injury law. It reflects a rate that is commonly  
22 accepted by Courts for attorneys in the Seattle area with the same or similar experience as me.  
23  
24  
25  
26

MOTION FOR CONTEMPT

1 In this matter, I have spent 2.1 hours reviewing the file, researching law, and  
2 drafting/editing this pleading and declaration. Based on my hourly rate, this amounts to  
3 \$997.5.  
4

5 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE  
6 STATE OF WASHINGTON AND THE LAWS OF THE UNITED STATES THAT THE  
7 FOREGOING IS TRUE AND CORRECT.

8 Signed this 25th day of October, 2018, in Tacoma, Washington.  
9

10  
11 By: /s/ Kevin M. Hastings  
Kevin M. Hastings  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I, **Sarah Awes** hereby declare under penalty of perjury under the laws of the State of Washington that I am employed at Pfau Cochran Vertetis Amala PLLC and that on today's date, I placed for service the foregoing via ECR by directing delivery to the following individuals:

Michael A. Jaeger  
Keith M. Hayasaka  
LEWIS BRISBOIS BISGAARD & SMITH, LLP  
1111 Third Ave. Suite 2700  
Seattle, Washington 98101  
Attorneys for Defendant Seattle Tunnel Partners

Timothy J. Repass  
Gavin Radkey  
WOOD SMITH HENNING & BERMAN  
520 Pike Street, Suite 1525  
Seattle, WA 98101  
Attorneys for Defendant Harris Rebar Seattle, Inc.

R. Scott Fallon  
Tyler Hermesen  
FALLON McKINLEY & WAKEFIELD, PLLC  
1111 3rd Ave, Ste. 2400  
Seattle, WA 98101  
Attorneys for HNTB Corporation

Gregory Wallace  
LAW OFFICE OF VITALE & WALLACE  
800 Fifth Avenue, Ste. 3800  
Seattle, WA 98104

DATED this 25th day of October, 2018.

/s/ Sarah Awes

Sarah Awes  
Legal Assistant